

**House Great Lakes and Environment
HB 4343, and HB's 5065 - 5073
11/28/07**

Madam Chair, thank you for the opportunity to speak today. I would like to take a few moments to review some of the legislative history of water withdrawal issues. The water use discussion has gone on for many years, but with significant progress.

- **PA 148 2003 – Groundwater Conservation Advisory Council** – Look at what we know and what we don't know about water use.
- **PA 177 of 2003 - Conflict Resolution Process** – Conflicts limited to just two counties.
- **PA 33-37 of 2006** – Developed a regulatory structure and focused the Groundwater Conservation Advisory Council's work on development of the assessment tool.

This summer the Council released its report and the tool continues to be reviewed. Over the past several years, a great deal of work has yielded some remarkable achievements. The legislative process has been closely aligned with the development of cutting edge science. Too often regulation does not closely match science, but this has been a rare integration of the two. We are developing legislation at the same time as the science comes out of the lab.

But let me offer some perspective on this, as exciting as this process is, and as interesting as the science is, we must be very careful to make sure we don't over regulate the use of our water resources. We have seen around the nation, whether we are talking about the Governor Richardson's New Mexico, or Atlanta Georgia, the economic value of water for Michigan's economy is becoming increasingly apparent. We are on the path of developing important science regarding the use of water. We need to make sure that the regulatory scheme does not block the use of our greatest economic resource. If we over regulate, the cost of using these resources can exceed the cost of using water elsewhere, and we will continue to lose manufacturing investment. It is critical that we remain conscious of the economic benefit of the water and the economic cost of regulation.

We cannot forget the context in which we are developing this law. We are a water rich state, and we have arguably the most challenged economy in the nation. Let me offer some perspective on water availability and also some economic context.

Water Facts

- Lansing Board of Water & Light uses 30 Million gal/day or 1 Billion gal/month from 187 Groundwater Wells
- 265 billion gal/year total groundwater withdrawn
- 1 inch of rain fall on land = 970 billion gal
- 31 inches of rainfall on average per year
 - 30 trillion gal/year on surface
 - 20 trillion gal/year on state portion of GL
 - 50 Trillion gal/year total

This summer at the Great Lakes Legislative Caucus meeting this summer in Traverse City a researcher from NOAA, said that they don't even include human use in their models that evaluate lake levels, because the volumes of use are so insignificantly small.

Economic Facts

- Michigan has the highest unemployment rate in the nation at 7.7%, a full 3 percentage points above the national average of 4.7%.
- Detroit's unemployment rate is 8.9% (Sept.)
- This state has lost 426,000 total non-farm jobs and 289,600 manufacturing jobs since 2000, according to the U.S. Department of Labor, Bureau of Labor Statistics.
- We have lost 75,000 jobs since October of 2006.
- The most recent report indicates we lost 22,400 nonfarm jobs in October of 2007 alone.

Concerns about the Package of Bills

Not supported by the new science

- Reduction of Index Flow – This change is not supported by the science or the scientists. This would abandon the years of scientific study and the million dollars of state money that funded the research.
- Constraint on bottle water use are very small compared to say a municipality, and ignores other water based products like paint, pop, beer, medicine, or baby formula.

Encourages Litigation -

- Allowing local prosecutor or any person “threatened with effects” to file action.
- Allows any interested party to challenge an existing permit.
- Allow any person to file an action in court.

Creates Regulatory Uncertainty

- DEQ can deny if there is an “unacceptable disruption to aquatic resources” – but aquatic resources are not defined and left to the discretion of the agency, outside of scientific information.
- DEQ becomes the arbiter in the “reasonable use balancing test” – fundamentally changing common law.
- Removes the “clear and convincing evidence” standard for the agency to revoke a permit.
- Eliminates the Groundwater Advisory Council

Increases Bureaucracy

- Empowers local units of government to regulate water withdrawal.
- Requires more permits by lowering thresholds.
- Unclear how many staff would be necessary, or how they would be funded.

Compact – HB 4343 (Ebli) - HB 4336 (Pavlov)

Michigan is the only state wholly within the GL Basin no other state has more than 40% of its land mass in the GL basin. Illinois has just 1/10th of one percent in the basin, yet they would have significant authority over Michigan's economic future. We must be very careful about the level of control we hand to our competitor states.

- **Sec. 9.1** of the compact says that any state laws in conflict with the compact are repealed. This is an enormous grab of authority by a regional government.
- **Prior Approval** - The council may change the standard of review and may change rules under the compact. I tend to think that is in conflict with Michigan's constitutional requirements for enactment and presentation and protections for separation of powers. But more importantly, I believe the legislature ought to have a role in make laws that affect citizens in Michigan. I suggest that the legislature should require prior approval before the governor votes on the council.
- **Scope of Impact** – the compact remains vague on whether impact means the great lakes or a very short segment of stream. How much control of Michigan do we want to hand to other states?

- **Grandfather** – Michigan law grants a grandfather based on the largest capacity in place as of 2006. The compact seems to interpret to be the smallest capacity – there is a difference and the compact constrain more than Michigan law.

With changes, MMA supports adoption of the compact.

Conclusion

We are concerned that House package tends to increase regulatory burdens, increase litigation, separate from science, and create greater disincentives for job producing investment in Michigan. If we are to improve the economy we must use the natural economic advantages in Michigan. If the cost of using these resources exceeds the cost of using water elsewhere, then we will continue to lose manufacturing investment.

We must do what is right for the environment and what is right for the economy. We believe that balance is possible.

Let me close with some thoughts from Dick Dauch, founder of American Axle about the challenges for Michigan “We operate in a global economy, at worldwide pricing, with domestic costs.” In developing new water law, it is critical that we remain conscious of the economic benefit of the water and the economic cost of regulation.

Great Lakes States	Percent of the State in the Great Lakes Basin
Illinois	0.1
Indiana	9.7
Michigan	99.9
Minnesota	7.4
New York	40.5
Ohio	28.1
Pennsylvania	1.3
Wisconsin	30.7



To: Members of the Michigan House of Representatives

From: Doug Roberts, Jr., Director of Environmental and Energy Policy

Subject: Great Lakes Compact

Date: 10/26/07

The purpose of this memo is to inform you that the Michigan Chamber of Commerce **supports** a Great Lakes Compact to help promote sustainable development in the Great Lakes Region. However, we have identified a number of key technical concerns with House Bills 4336 and HB 4343 that need to be addressed. For job providers it is critical that these concerns be addressed prior to passage of the Compact.

Chamber Policy on Great Lakes Compact:

The Michigan Chamber of Commerce Board of Directors adopted the following statement in support of the Great Lakes Compact:

- Support the adoption of the Great Lakes Compact with necessary amendments and/or clarifications to ensure that consumptive uses of water can be utilized within the basin to create economic activity. The compact offers the best protection against diversions of Great Lakes water outside the basin.

There appears to be two paths to clarify the Great Lakes Compact. The first would be to amend the Great Lakes Compact. This would provide the greatest legal certainty but would be difficult to accomplish as all states would be required to adopt similar amendments. The second path is to move state implementing language with the compact as it moves along in the process. The presence of implementing language would help to provide clarification to water users and some guidance to the court system.

Key Issues and Concerns:

Issue 1 - Effectuation Clause (HB 4336 and HB 4343, Page 49 Lines 18-19)

Background and Concern: In 2006, the Michigan Legislature enacted Public Acts 33-36, legislation that was related to water withdrawals. One of the goals of the legislation was to define in Michigan law key concepts contained in the Compact like grandfathering, conservation, and scope of permits. Now as the Michigan Legislature turns their attention to the Compact, job providers are concerned that the Compact could override PAs 33-36 of '06. Job providers need clarity about which rules they will be required to follow.

Compact: Section 9.1: "all acts and parts of acts inconsistent with this act are to the extent of such inconsistency hereby repealed"

Issue 2 - Grandfathering (HB 4336 and HB 4343, Page 36, Lines 7,8)

Background and Concern: In PA 33-36 of 2006 standards for grandfathering water users were adopted. These standards allow water users to submit their own grandfathering amount based on a menu of choices. In the Michigan law the applicant can choose whichever amount gives them the greatest capacity. The Compact on the other hand, appears to require more a different set of qualifiers. These reporting standards need to be clarified.

Michigan Law: PA 33 of 2006: “(c) “Baseline capacity” means either of the following:

- (i) The following applicable withdrawal capacity as reported to the department or the department of agriculture, as appropriate, by the person making the withdrawal in the April 1, 2007 annual report submitted under section 32707 or in the April 1, 2007 water use conservation plan submitted under section 32708:
 - (A) For a community supply, the total designed withdrawal capacity for the community supply under the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, on the effective date of the amendatory act that added this subparagraph.
 - (B) Unless reported under a different provision of this subparagraph, for a quarry or mine that holds an authorization to discharge under part 31 that includes a discharge volume, the discharge volume stated in that authorization on the effective date of the amendatory act that added this subparagraph.
 - (C) The system capacity used or developed to make a withdrawal on the effective date of the amendatory act that added this subparagraph, if the system capacity and a description of the system capacity are included in an annual report that is submitted under this part.
- (ii) If the person making the withdrawal does not report under subparagraph (i), the highest annual amount of water withdrawn as reported under this part for calendar year 2002, 2003, 2004, or 2005”.

Great Lakes Compact, Section 4.12.2: “BASELINE.

- A. To establish a baseline for determining a new or increased diversion, consumptive use or withdrawal, each party shall develop either or both of the following lists for their jurisdiction:
 - I. A list of existing withdrawal approvals as of the effective date of the compact;
 - II. A list of the capacity of existing systems as of the effective date of this compact. The capacity of the existing systems should be presented in terms of withdrawal capacity, treatment capacity, distribution capacity, or other capacity limiting factors. The capacity of the existing systems must represent the state of the systems. Existing capacity determinations shall be based upon approval limits or the most restrictive capacity information.”

Issue 3- Scope of Permits (HB 4336 and HB 4343, Pg 34, line 7)

Background and Concern: Job Providers have expressed serious concerns regarding the manner in which “impacts” to water resources are judged under 4.11.2 of the proposed Compact. The Decision-Making Standard in 4.11 of the Compact that governs the review and approval of new or increased withdrawals contains several criteria requiring consideration of impacts on other users and resources. One element, which we endorse, balances a consideration of multiple factors, including the nature and degree of impacts versus the need for, and efficiency of, the proposed use. However, a separate standard creates a more stringent test, which if not satisfied by itself requires disapproval of the project. The problem with this formulation is that it creates a serious ambiguity as to the scale of impacts that would preclude withdrawal approvals. Clarification is necessary to determine what standard permit applicants will be held to.

Compact: 4.12.2: “The withdrawal or consumptive use will be implemented so as to ensure that the proposal will result in no significant individual or cumulative adverse impacts to the quantity or quality of the waters and water dependent natural resources and the applicable source watershed.”

Issue 4 - Water Conservation (HB 4336 and HB 4343, Pg 20, Line 10)

Background and Concern: During final deliberations of PA 33-36 of 2006 consensus was reached about how to enact water conservation measures. The Governor’s office along with the environmental groups put forward a plan that required industry sectors to develop best management practices. The business community supported this voluntary approach. With the enactment of PA 35 of 2006 the Michigan Chamber has undertaken the effort to design water conservation standards for a cross section of water users. Clarification is needed to ensure that industry developed conservation standards can be used to fulfill requirements of the Compact.

Michigan Law PA 35 of 2006: Sec. 32708a. “(1) Within 12 months after the effective date of the amendatory act that added this section, each water user’s sector shall begin designing guidelines for generally accepted water management practices, or environmentally sound and economically feasible water conservation measures within that sector.

Within 24 months after the effective date of the amendatory act that added this section, the department shall review and report to the appropriate standing committees of the legislature on whether or not there are reasonably detailed criteria for assisting a facility in determining whether water is being used in an efficient manner. Such guidelines may be adopted by an established statewide professional or trade association representing that sector.”

Compact Section 4.2.2: Within two years of the effective date of this compact, each party shall develop its own water conservation and efficiency goals and objectives consistent with the basin-wide goals and objectives, and shall develop and implement a water conservation and efficiency program, either voluntary or mandatory, within its jurisdiction based on the party's goals and objectives. Each party shall annually assess its programs in meeting the party's goals and objectives, report to the council and the regional body and make this annual assessment available to the public.

Issue 5 - Unchecked Ability to Change Standard (HB 4336 and HB 4343, Page 14, Line 26)

Background and Concern: The Compact contains a “Standard of Review and Decision (the “Decision-Making Standard”) that sets forth the minimum tests governing whether a new or increased water withdrawal or consumptive use will be approved. The Decision-Making Standard is one of the most critical statutory parts of the Compact, since it guides the work of all States and water management agencies. The language contains a number of balancing elements and definitions that are critical for water users. However, Section 3.1 of the proposed Compact may allow the newly-created Great Lakes-St. Lawrence River Basin Water Resources Council (the “Council”), composed of the Governors or their appointees, to modify the Standard without going back to the State legislatures.

Compact Section 3.1: “The Council may revise the standard of review and decision, after consultation with the provinces and upon unanimous vote of all council members by regulation duly adopted in accordance with section 3.3 of this compact and in accordance with each party’s respective statutory authorities and applicable procedures.”

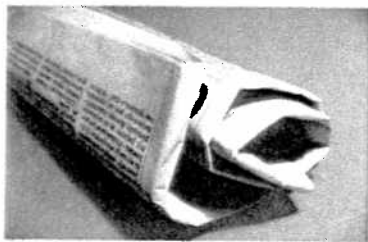
Issue 6 – Michigan must adopt permit thresholds (HB 4336 and HB 4343, Pages 32-33)

Background and Concern: Public Acts 33-36 of 2006 set permit thresholds for withdrawing water at 2 million gallon a day. The Compact requires each state to set permit thresholds. The Compact says that failure to set thresholds within 10 years will require that all withdrawals over 100,000 gallons per day be regulated. It is very important that Michigan clarify that the permit standards required under PA 33-36 are the standards used to meet the Compact requirements.

Compact Section 4.10.2: “Any Party that fails to set threshold levels that comply with section 4.10.1 any time before 10 years after the effective date of this compact shall apply a threshold level for management and regulation of all new or increased withdrawals 100,000 gallons per day or greater average in any 90 day period”.

Conclusion:

The Michigan Chamber looks forward to working with you in developing implementing language to the Great Lakes compact to help assure that water can be utilized in the Great Lakes Basin to create economic activity. Should you have any questions or concerns about the items in this memo or other issues related to the Great Lakes Compact please feel free to contact me at (517) 371-7673 or droberts@michamber.com.



NEWS AND VIEWS

Michigan Water Withdrawal Legislation 2006/2007

Associated Press

Climate change makes Great Lakes compact urgent, supporters say, Nov 28, 2007

Hometown Newspapers

Protect Great Lakes before thirsty neighbors come calling, Nov 8, 2007

Detroit Free Press

Wade in to protect the Great Lakes, Nov 7, 2007

Lansing State Journal

Water pact: Michigan wrongly encourages thirsty with compact delay, Nov 7, 2007

The Detroit News

Manage Michigan's water for widest benefit, Jul 26, 2007

Big Rapids Pioneer

A few more words on water ... and how water is water, Mar 15, 2006

Associated Press

Governor Granholm signs water protection bills, Mar 8, 2006

Office of Governor Jennifer Granholm, News Release

Granholm Signs Landmark Legislation to Protect Great Lakes, Feb 28, 2006

The Detroit News

Governor signs bills giving state oversight of water withdrawals, Feb 28, 2006

Gongwer News

Granholm signs water bills, Feb 28, 2006

MIRS News

Governor signs water bills, Feb 28, 2006

The Grand Rapids Press

Great Lakes, good regulations, Feb 20, 2006

The Detroit News

Balance protection for lakes, economy, Feb 15, 2006

Battle Creek Enquirer

State right to regulate water withdrawals, Feb 14, 2006

Detroit Free Press

Lakes Protected — Strong safeguards from a bipartisan effort, Feb 11, 2006

Detroit Free Press

State Agrees on Limits for Water Use, Feb 10, 2006

The Flint Journal

New state withdrawal rules good for Michigan's future, Feb 10, 2006

"For starters, the Legislature must approve Michigan's participation in the Great Lakes compact." — Detroit Free Press, Nov 7, 2007

"While the intent is good, we fear the practical application of these laws (House) will stifle growth by subjecting all industrial expansion, from agriculture to manufacturing, to lengthy and costly court challenges by environmentalists with a potent new weapon."

— The Detroit News, Jul 26, 2007

that existing laws are inadequate to protect the Great Lakes from diversions and overuse."

Noah Hall, a Wayne State University law professor who helped craft a report on the Great Lakes

Climate change makes Great Lakes compact urgent, supporters say

Report: Less snow, shortages threaten lakes' water levels

JOHN FLESHER

Associated Press

TRAVERSE CITY — Climate change appears likely to reduce already low Great Lakes water levels even further, making it more urgent to approve a regional compact protecting them from diversion and overuse, environmentalists said Tuesday.

Research suggests warming temperatures may bring less snowfall to the region while boosting evaporation rates, driving down the lakes and the streams and groundwater that feed them, the National Wildlife Federation said.

At the same time, the lakes may become an even more tempting target for water-starved regions such as the desert Southwest, the group said in a newly released report.

"We do not have the luxury of waiting," said Molly Flanagan, the federation's water program manager. "If we do not act to protect our water, others may decide to take action for us and they may not make the same choices we would make."

Governors of the eight states on the Great Lakes signed a compact in 2005 that would outlaw most diversions of water from the region's drainage basin and require the states to set water use policies.

The pact needs approval of the eight state legislatures and Congress to take effect. Lawmakers in Minnesota and Illinois have endorsed it, while ratification bills are pending in Indiana, Michigan, New York

where cities just outside the basin fear it could prevent them from tapping into Lake Michigan for municipal water supplies. Supporters of the compact have focused largely on what Flanagan called the region's "primal fear" that Sun Belt states would use their growing political clout to grab Great Lakes water.

But the wildlife federation report says climate change is an equally serious threat. The proposed compact wouldn't do anything to prevent it, but would give state governments the legal and policy tools they need to deal with the effects, said Noah Hall, a Wayne State University law professor who helped craft the report.

ONLINE

► National Wildlife Federation: www.nwf.org

"We have known for many years that existing laws are inadequate to protect the Great Lakes from diversions and overuse," Hall said. "Now we know that climate change is certain to put additional stress and pressure on the Great Lakes."

While not breaking any new scientific ground, the report summarizes previous findings from studies of the possible effects of climate change in the region.

During the century beginning in the late 1800s, temperatures in the Great Lakes region rose nearly twice as much as the average increase for the entire nation, the report says. As the trend continues, evaporation rates could jump enough to more than offset any precipitation increases.

Water levels on the Great Lakes — particularly Superior, Michigan and Huron — have been in decline for much of the past decade.

ASSOCIATED PRESS, Nov 28 2007

Nov 8, 2007

Protect Great Lakes before thirsty neighbors come calling

New Mexico Gov. Bill Richardson, who is currently seeking the Democratic nomination for president, fired off a warning shot recently that should make everyone in Michigan and the Great Lakes region take notice.

At a campaign stop last month, Richardson suggested states in the arid Southwest, like California, Arizona, Nevada and New Mexico, should look to the Midwest to help quench their insatiable thirst for water. Richardson said he advocated a system of "water delivery and water production" to move water west, noting that "states like Wisconsin are awash in water."

Although he referenced Wisconsin, those of us in Michigan should be equally alarmed, especially as more and more people move out West, where there are already major water shortages.

It almost defies logic that desert states like Nevada and Arizona are in the midst of population explosions. Take Arizona, for example. Between 1990 and 2000, the state experienced a 40-percent population growth rate, which was three times the national average, and is expected to have 6.4 million residents by the year 2025.

The population of Las Vegas, which is one of the fastest growing cities in the nation, is just shy of 2 million residents, up nearly 50 percent since just 1999.

So it's fair to say it won't be long before Michigan and our Great Lakes neighbors have a big bull's-eye on our water resources. That is why we need to put protections in place that will prevent a major water grab by our thirsty neighbors.

A good place to start would be for our state lawmakers to pass Great Lakes protection legislation that was introduced in both the state Senate and House back in August, and includes the eight-state Great Lakes Compact and accompanying laws. This legislation will put in place safeguards against water diversions from the Great Lakes basin, which holds 18 percent of the world's fresh water supply.

Our lawmakers need to act with some sense of urgency on the legislation, because, as Richardson's comments make very clear, there are plenty of people out there who are thirsting for our water.

Detroit Free Press

www.freep.com

November 7, 2007

EDITORIAL

Lansing starts to get serious about water this week with hearings scheduled today in both the state House and Senate. Against a backdrop of low Great Lakes levels, drought in the Southeast that has led to federal lawsuits, and contentious struggles in many of the Western states to secure adequate water supplies, it should be a no-brainer.

For starters, the Legislature must approve Michigan's participation in the Great Lakes compact. The governors of the eight Great Lakes states and the premiers of the two Great Lakes provinces negotiated the basic agreement that will largely keep Great Lakes water in the Great Lakes basin. Once all the states have signed on, the agreement also has to get Congress' blessing.

Michigan, sad to say, has been one of the slower pokes in moving this agreement along. There should be no hesitancy here. Why would a state like Pennsylvania, with 51 miles of Lake Erie shoreline, think this is important if a state with 42 times as much mainland touching on four of the five lakes keeps dawdling?

The compact agreement among the Great Lakes governors and premiers allows diversions only into outlying parts of counties that straddle the basin. Even then, any water taken for communities just over the watershed line must be treated and returned to the Great Lakes, which means relatively little net loss of water.

That exception gives leeway to the states that, unlike Michigan, are not so fully within the Great Lakes basin. It may not be ideal, but it will keep peace in the region - enough that all the states can stand firm against requests from farther afield.

Accompanying pieces of legislation would help the state assess overall water use; protect groundwater, most of which ultimately feeds the lakes; foster better conservation techniques; and ensure public information and input on major water uses. Some are controversial, since Michiganders are used to simply drilling a well or extending a pipe to get excellent water. But such measures will become increasingly vital to future defense of water.

When a New Mexico governor and presidential candidate spouts off about tapping the Great Lakes, it's time to take deliberate, careful steps to ensure that Michigan has both the protections and the data to keep the water where it belongs - here.

Lansing State Journal

November 7, 2007

OPINION

Water pact: Michigan wrongly encourages thirsty with compact delay

Michigan lawmakers have yet to endorse the Great Lakes Compact, an alliance of eight states and two Canadian provinces to jointly protect the huge freshwater reserves that make this region so special.

Here's just one reason why Michigan's inaction should end on this topic: New Mexico Gov. Bill Richardson.

A Democratic candidate for president, Richardson recently told an audience in the desert mecca of Las Vegas that he wants a "national policy" on water that has Western and Eastern states talking to each other about "proper use."

That's political code for taking water from here and moving it to there. And the scary thing is that more and more people will soon latch onto the idea.

The Southeast is enduring an extreme drought that already has different states in the same watershed sniping at each other. Vegas and Phoenix have enjoyed years of breakneck growth - in a region with limited water supplies. It's an easy political play to suggest to the parched that the solution rests with the neighbors up north, with the lakes that make Michigan the state that it is.

In this environment, there's every reason for Michigan to band together with states of similar resources and goals to protect this asset. Illinois and Minnesota enacted the measure earlier this year, but in Michigan bills to do the same have languished at the Capitol.

Water management is an exceedingly complex issue. However, if Michigan remains inactive on regional water oversight, what message does that send to thirsty states down south?

From this vantage point, an obvious solution is for areas lacking water to think about growth before the system is overtaxed. Or water-short states can invest in desalination plants to produce potable water from sea water.

Still, the Great Lakes will loom large in any discussion of freshwater needs. And Michigan should face facts: The growth in the Southwest and Southeast has made those states ever more politically potent in Washington, D.C., even while Michigan's political influence has dipped.

To make the compact fully operational, the member states must agree and Congress must consent. If Michigan doesn't consider the compact important, that only empowers the arguments of congressional delegations from other states that a more "national" approach is needed - just as Gov. Richardson has suggested.

It's time to get the Great Lakes Compact back on the agenda in Lansing, before someone in Washington decides on an entirely different set of water priorities.

Editorial

Manage Michigan's water for widest benefit**Proposals for overly restrict laws could stifle growth of the state**

Water is Michigan's most marketable asset, particularly as the nation's population and economic activity shifts to the thirsty Southwest. So protecting and well managing that asset is essential to the state's future.

But legislation introduced in the state House Wednesday to bring Michigan in line with the Great Lakes Compact, a proposed agreement between states bordering the lakes, could turn water into a liability if protections become so restrictive they choke off economic growth.

The bills would establish a new regime of legal protections governing how water is withdrawn from the Great Lakes and how it is used, and by whom. The laws are particularly burdensome on water bottling and mining companies, and would extend to the entire Great Lakes watershed or, in effect, the entire state.

The legislation would require new permits for water withdrawals and demand that water users prove they are in no way harming the resource.

While the intent is good, we fear the practical application of these laws will stifle growth by subjecting all industrial expansion, from agriculture to manufacturing, to lengthy and costly court challenges by environmentalists armed with a potent new weapon.

We see this week the need for regional cooperation in protecting the Great Lakes with the questionable decision by Indiana to allow an oil refinery to dump a nasty blob of ammonia and sludge into Lake Michigan.

But we also see how water protection laws can be used to needlessly kill jobs with the correct ruling by the Michigan Supreme Court against environmental groups challenging the Nestle/Ice Mountain bottling plant in Osceola County. The plant has been targeted even though it will use less water than most food processing and automotive manufacturing facilities.

It would be foolish for Michigan and other Great Lakes states not to protect water quality or monitor how much water is being drawn out of the lakes for shipment to other places.

It would be equally foolish to so restrict water use that the state derives no economic benefit beyond tourism from this potent asset.

As these bills move through the Legislature, lawmakers should streamline the permit requirements and spell out in precise language the appropriate balance between environmental protection and economic growth.

A few more words on water ... and how water is water is water It's only my opinion—— By Jim Crees

Following the signing of water resources protection legislation a couple weeks back, I thought I probably wouldn't be opining on THAT topic too soon.

And yet ...

When Nestles' Ice Mountain brand water bottling operation looked to Michigan some five years ago, they focused their attentions on the Osceola-Mecosta area - a part of the state rich in water resources.

Soon after the water bottler's research teams began investigating the possibility of locating a new operation in west-central Michigan, questions started being raised as to the who, how and why of protecting one of the most valuable resources we have in our neighborhood.

People were concerned.

Folks stated asking questions and, a little later on, demanding answers.

The Ice Mountain team, for their part, were upfront and open, willing to discuss the issues with anybody - township boards, city councils, civic organizations ... and with the growing ranks of their opponents.

The opponents, on the other hand, always seem to have enjoyed yelling a lot - but weren't too strong on negotiating.

As things developed, a lot more people started asking questions. The questions usually had to do specifically with the Ice Mountain operation that had set to work in Mecosta County and about the company's desire to purchase water from municipal wells in the city of Evart.

But others, with a little more ... extended ... vision were wondering about all the other water bottling operations around the state - and EVERY industry using water in its production process for that matter.

What about mass production agriculture? What about golf courses? What about water parks? What about beverage bottlers who used water as 98-99 percent of its final product?

What about water generally?

How do we develop business and industry across the board while still protecting the water resources that make this state so attractive to industry in the first place?

How do we balance creating jobs with protecting natural resources - including but not exclusive to our water?

So a whole bunch of people starting working on a pile of legislation that would more

clearly define terms and more effectively set water use limitations.

The folks in Lansing, with the support of a whole range of professionals and advisors, began looking for ways to preserve our water while still keeping this state in the market as an industrial home to those already here and an attractive site to those potential business and industry start-ups.

There were hearings, conferences, meetings, public sessions, negotiations and a ton of material churned out in academia, the newspapers, research centers, university laboratories, industry R&D operations, lobbyist offices, think tank gatherings and more.

The final result was the recently signed, sealed and approved legislation that garnered a huge majority of support from representatives and senators in both houses of the state legislature; got the nod and signature from a governor who had been carrying out some very serious political maneuvering to bring this effort to fruition; the approval of the ag industry; the nod from golf course owners; a hale and hearty salute from conservation groups such as the Michigan United Conservation Clubs and Trout Unlimited; (to name a few); and the OK from many, many landowners and lakefront property associations around the state.

It was a wide ranging effort that took in everybody's opinion and gave every person, club, business, municipality, industry and interest group in the state a chance to verbalize their concerns - and many, many did.

And when the legislation was signed there was a collective sigh from just about all involved.

People were pleased with the outcome.

Or ...at least some were.

Here in our neighborhood, around Mecosta and Osceola counties, there are still some who continue an unfortunate crusade against Ice Mountain.

Not against the use of water in business and industry in Michigan; not against the some two dozen other water bottlers around the state; not against industries that suck up HUGE quantities of water, far exceeding anything that Ice Mountain will ever use; not against anyone other than Ice Mountain.

And their continuing, (if not stumbling), attacks against Ice Mountain, the water bottlers municipal 'partners' in the Ice Mountain

operation, and individual legislators who supported the water resource protection legislation are, at best, disingenuous.

Some supporters of the Michigan Citizens for Water Conservation group continue to tout their claims that water bottled and sold for human consumption is different than water used in the production of baby food, beer, automobile tires or cement blocks.

Recently they have claimed that water used in the production of baby food, pharmaceuticals, or soft drinks isn't REALLY water ... it's an ingredient.

ONLY water bottled and sold as water is REALLY water.

Wellllllllllll ... ladies and gentlemen of the jury.

Let me lay this out for you as simply as I can, (and I'm a pretty simple guy!)

Water is water.

Water in an Ice Mountain bottle is water - and they admit it.

Water in Aquafina or Dasani bottles is water too, (so any retailer who boycotts Ice Mountain but doesn't hesitate to sell Absolut is simply being hypocritical.)

Water in beer is water.

Water in potatoes is water.

Water in milk is water.

Water in paint, tires, shingles, vinyl siding, your SUV, flowing through the sprinkler system, filling your pool, being used to produce Viagra and Preparation H is all water.

Water in Coca Cola is water just the same as water in Pepsi Cola is water.

Water coming out of my tap and the water flowing by my back door is water.

Water is water. When it is removed from the system, the aquifer, spring, or well doesn't know that it has become cola, beer, baby food or bottled water.

Nature recognizes no difference in how the water is used.

So ...we need to have across the board protections in place to protect the total use of all of our water resources.

Our state government has done that.

So the naysayers can certainly continue to maintain a careful eye on what happens as should we all, but when it comes to singling out one water user or the other, they really ought to change their tune ...

...or get a new hobby.

Governor Granholm signs water protection bills

KATHY BARKS HOFFMAN
ASSOCIATED PRESS WRITER

February 28, 2006

LANSING (AP) - Michigan finally has new laws granting oversight of large water users such as manufacturers, utilities and water bottling plants, fulfilling a commitment the state made 20 years ago to protect the water in the Great Lakes basin.

"This is a celebration of something that has been a long time in coming," Gov. Jennifer Granholm said Tuesday as she ceremoniously signed the bills in front of a landscape mural featuring a pond and marsh at the state historical museum.

Until Tuesday, Michigan had been the only state in the Great Lakes region that had not passed laws to regulate large water withdrawals. In 1985, the state signed the Great Lakes Charter with the seven other Great Lakes states and Canada pledging to protect the world's largest body of fresh water from withdrawal or diversion.

But it had never gotten around to passing its own laws on such withdrawals. Some water law experts have warned that thirsty Sun Belt states or even foreign countries eventually will try hooking up to the Great Lakes as population growth further strains their already limited supplies. Withdrawals

from Michigan's inland lakes and rivers also were a worry.

"Before these water use laws, anyone could suck away our most precious natural resource without any recourse or public input," Becky Beauregard of the Michigan League of Conservation Voters said Tuesday in a statement. "For the first time in Michigan's history, we have laws to protect our water from irresponsible use and abuse."

The new laws were crafted by Republican and Democratic lawmakers, the Granholm administration, environmentalists, businesses and agricultural groups.

Granholm and lawmakers said the bipartisan effort took several years to reach fruition but resulted in balanced legislation that allows agricultural and commercial water users to meet their needs while still retaining water for recreation and for future use.

"We want to protect our Great Lakes for our future and our children's future and our grandchildren's future," said Sen. Patricia Birkholz, a Sangawick Republican who has been active in crafting the water withdrawal legislation.

Now that the new laws are in place,

See WATER BILLS Page 5

WATER BILLS from 1

Granholm plans to lift a moratorium she had placed on new or expanded bottled water operations in Michigan until the legislature enacted a water withdrawal law.

It's unclear whether the new laws will affect a court fight over water withdrawals in Mecosta County by Ice Mountain Spring Water, a subsidiary of Connecticut-based Nestle Waters North America.

Ice Mountain and Michigan Citizens for Water Conservation last month reached a deal on how much spring water can be pumped from wells in the county, but

the environmental group still plans to ask the state Supreme Court to weigh the broader legal issue of diverting water outside Michigan.

Under the new law, water shipped outside the Great Lakes basin in containers smaller than 5.7 gallons would be classified as a "consumptive use," not a diversion. State permits would be required, however, for any new or expanded water bottling plants withdrawing more than 250,000 gallons per day.

The legislation also requires water users to get a state permit to make new

withdrawals averaging more than 5 million gallons per day from the Great Lakes or rivers connecting the lakes, or more than 2 million gallons per day from other water sources.

Users currently above those amounts would not need permits unless they plan to expand their withdrawals. Users could not withdraw more than 100,000 gallons per day if the withdrawals would harm designated trout streams.

Businesses that use water will now be required to propose water conservation measures.

To: <gov_office@michigan.gov>
Sent: Tuesday, February 28, 2006 3:20 PM
Subject: Governor signs bills protecting Great Lakes

Granholt Signs Landmark Legislation to Protect Great Lakes

LANSING – Governor Jennifer M. Granholm today signed legislation that for the first time protects Michigan waters from large-scale diversions and withdrawals. The landmark legislation fulfills a commitment Michigan made more than 20 years ago to join with other states and Canada to protect and preserve the waters of the Great Lakes Basin.

"Michigan has been blessed by a bounty of water that fuels our economy and defines our character," Granholm said. "It is our most vital resource, and its preservation and protection is far too important to be left to future generations."

The bipartisan package provides an important framework for comprehensive water management in Michigan. It allows the state to manage large quantity water withdrawals of over 100,000 gallons per day and prohibits withdrawals that would have an adverse impact on the water resource. The legislation also requires all new or increased bottled water operators with withdrawals of over 250,000 gallons per day to meet high standards, including no adverse resource impact, no impact on riparian rights or common water law, and must address hydrologic impacts.

Granholm first called on the Legislature to enact the comprehensive water legacy legislation more than two years ago, and a bipartisan group of lawmakers, environmental, industry, and agricultural advocates, worked to craft legislation that both protects the state's natural resources and the interests involved.

"The legislation we celebrate today represents the best of the Michigan spirit," said Granholm. "The Water Legacy Act is the product of compromise, negotiation, and a bipartisan effort. It will benefit generations to come."

Granholm recognized numerous legislators and nonprofit organizations, including the Michigan Environmental Council, PIRGIM, the Michigan Chamber, The Farm Bureau, and Clean Water Action for their work in making the legislation possible.

"More than 20 years ago, Michigan made a commitment to protect our water," said Granholm. "Today, thanks to the hard work of many legislative and environmental leaders, we finally make good on that promise."

In 1985, Michigan signed the Great Lakes Charter with the seven other Great Lakes States and Canada, pledging to protect the waters of the Great Lakes Basin from withdrawal or diversion. Until today, Michigan was the only state that had failed to pass legislations fulfilling this commitment.

Under Granholm's leadership, Michigan has taken a number of steps to protect the state's water resources, including:

- prohibiting open water disposal of contaminated dredge sediments in the Great Lakes;
- implementing the nation's first laws regulating the discharge of ballast water from ocean-going ships;
- joining with other Great Lakes states in signing the Great Lakes Annex Agreements;
- renewing groundwater permit fees, allowing the Michigan Department of Environmental Quality to issue permits and complete inspections for businesses that discharge treated water into the groundwater system;
- collecting fees under the National Pollution Discharge Elimination System (NPDES) to protect our lakes and streams from contaminated wastewater. (Until two years ago, Michigan was the only state in the nation that didn't charge fees for wastewater discharge permits.)

The Water Legacy Act includes: Senate Bill 850, sponsored by Senator Patty Birkholz (R-Saugatuck Township);

03/01/2006

Senate Bill 851, sponsored by Senator Bruce Patterson (R-Canton); Senate Bill 852, sponsored by Senator Gerald Van Woerkom (R-Norton Shores); Senate Bill 854, sponsored by Senator Ray Basham (D-Taylor); and Senate Bill 857, sponsored by Senator Liz Brater (D-Ann Arbor).

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03/01/2006

The Detroit News

February 28, 2006

Governor signs bills giving state oversight of water withdrawals

LANSING -- Michigan finally has rules giving the state oversight of manufacturers, utilities and water bottling plants that use large amounts of water, fulfilling a commitment the state made 20 years ago to protect the water in the Great Lakes basin.

"This is a celebration of something that has been a long time in coming," Gov. Jennifer Granholm said as she ceremonially signed the bills in front of a landscape mural featuring a pond and marsh at the state historical museum.

Michigan had been the only state in the Great Lakes region that had not enacted laws to regulate large water withdrawals. The new laws were crafted by Republican and Democratic lawmakers, the Granholm administration, environmentalists, businesses and farmers.

Now that the legislation has been signed into law, Granholm plans to lift a moratorium she had placed on new or expanded bottled water operations in Michigan until the Legislature enacted a water withdrawal law.

A key provision in the new laws designates water shipped outside the Great Lakes basin in containers smaller than 5.7 gallons as a product, not a diversion. That means existing water bottlers such as Ice Mountain, a subsidiary of Connecticut-based Nestle Waters North America, won't be affected by the new laws.

Gongwer News

Volume #45, Report #39, Article #07 --Tuesday, February 28, 2006

GRANHOLM SIGNS WATER BILLS

Governor Jennifer Granholm on Tuesday signed a series of five bills that she said would provide state legal protection for the Great Lakes against large-scale water diversions.

Ms. Granholm, who just returned from the National Governors Association meeting in Washington, D.C., signed SB 850, SB 851, SB 852, SB 854 and SB 857 in a ceremony at the state library and historical center.

"This bipartisan package provides an important framework for comprehensive water management in Michigan," Ms. Granholm said. "It allows the state to manage large quantity withdrawals of over 100,000 gallons per day and prohibits withdrawals that would have an adverse impact on the water resource."

The legislation also specifically deals with new or enlarged bottled water operations, requiring those operations meet high standards, do not affect riparian rights, and not affect the resource.

An Ice Mountain water bottling plant operated by the Nestle Company has been a prime source of controversy, with environmentalists charging it has acted as a withdrawal from the system.

And a number of environmental groups, such as Clean Water Action, did not support the specific bills. Environmentalists generally were pleased some action had been taken.

Doug Roberts Jr. of the Michigan Chamber of Commerce said the legislation means that investors in the state "can be confident the water resources they need to create and grow jobs in our state will be accessible."

MIRS News

February 28, 2006

Governor Signs Water Bills

Gov. Jennifer **GRANHOLM** today signed legislation that creates the state's first limits on the amount of water that could be withdrawn and sets a permit structure for such withdrawals.

"Michigan has been blessed by a bounty of water that fuels our economy and defines our character," Granholm said. "It is our most vital resource, and its preservation and protection is far too important to be left to future generations."

The legislation is a five-bill package and allows the state to manage water withdrawals of more than 100,000 gallons per day and also prohibits withdrawals that would have an adverse impact on the water resource.

It also requires all new or increased bottled water operators who withdraw more than 250,000 gallons per day to ensure they are not having adverse resource impacts, impacts on riparian rights or common water law, and are addressing hydrological impacts.

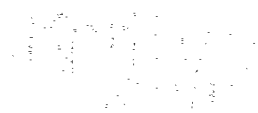
The Legislature has been working on these bills for two years. The bills complement an agreement Michigan made with other Great Lakes states and Canada to preserve and protect the Great Lakes water basin.

"The legislation we celebrate today represents the best of the Michigan spirit," said Granholm. "The Water Legacy Act is the product of compromise, negotiation, and a bipartisan effort. It will benefit generations to come."

The legislation is a compromise between the Legislature, environmentalists and business groups.

"Michigan's new policies will ensure the Great Lakes will be around for many generations to enjoy," said Sen. Patty **BIRKHOLZ** (R-Saugatuck Twp.), chair of the Senate Natural Resources and Environmental Affairs Committee. "I'm extremely pleased to see our efforts are paying off. Both sides of the aisle, as well as interested parties from around the state, came together on this package so it would be the best legislation possible to meet the needs of both recreational water users and Michigan's businesses that rely on water."

The Water Legacy Act includes: SB 0850, sponsored by Birkholz; SB 0851, sponsored by Sen. Bruce **PATTERSON** (R-Canton); SB 0852, sponsored by Sen. Gerald **VAN WOERKOM** (R-Norton Shores); SB 0854, sponsored by Sen. Ray **BASHAM** (D-Taylor); and SB 0857, sponsored by Sen. Liz **BRATER** (D-Ann Arbor).



Everything Michigan

THE GRAND RAPIDS PRESS

Great Lakes, good regulations

Monday, February 20, 2006

Four years have elapsed since a task force on the Great Lakes called for "comprehensive water withdrawal laws."

Now, thanks to the efforts of a number of West Michigan legislators, those protections have been put in place. The new laws will mark an important step forward for Michigan, a state with an abundance of water and -- until now -- a deficit of regulations for it.

Sen. Patricia Birkholz, R-Saugatuck, has been a prime mover behind the water legislation. She deserves credit for winning support from businesses, farmers and environmentalists and for securing broad, bipartisan backing in the Legislature.

Gov. Jennifer Granholm, who is expected to sign the regulations into law early next week, pushed the issue.

Senate Majority Leader Kenneth Sikkema, R-Wyoming, chaired the task force that first saw the need for better regulation. He helped shepherd the laws to the governor's desk.

The new rules will for the first time regulate high-capacity wells. In addition, they bring the state in line with definitions and requirements of a multi-state water agreement. This is an important feature. Michigan is at the center of the water debate, geographically and symbolically. But no state or international border contains the problem.

Eight states and two Canadian provinces have a piece of the Great Lakes basin, and together share responsibility for managing this treasure and guarding against outside threats. Nobody should be allowed to use Great Lakes water against the collective will of those who own and depend upon it. By working within the framework of the multi-state agreement, called the Great Lakes Charter Annex, Michigan recognizes the need to stand with neighbors.

The new laws would require that users secure a permit from the state to:

- Take more than 2 million gallons a day from ground or surface water, excluding the Great Lakes themselves.
- Take more than 5 million gallons a day from the Great Lakes.
- Take more than 250,000 gallons of water a day for purposes of a water bottling operation.

The final standard was a last-minute compromise with environmental groups. They wanted tougher restrictions for water bottling plants like the Ice Mountain operation in Mecosta County. Ice Mountain sparked concern over the sale of Michigan's water outside the state.

However, singling out bottled water for stricter supervision ignores a fundamental principle that should underlie these protections. State policy ought to focus on what happens when water comes out of the ground, not where it goes after that.

High capacity wells can leave neighbors tapping dry aquifers, and can harm the environment. Addressing those concerns should be the priority.

There's no sound basis for legally distinguishing between water going out of Michigan as Aquafina, Coke

or baby food. All could damage neighboring lakes, streams and wetlands, and all should be judged on the same basis.

Also, the measure of environmental harm used in the new laws is too narrow. The laws focus on whether fast-pumping wells will harm state-designated trout streams, ignoring threats to other parts of the environment.

Fortunately, the state's Groundwater Conservation Advisory Council will have to return with broader standards after two years.

Those concerns are small. The big picture shouldn't be missed. Michigan has taken a major step toward securing its economic and environmental future. We can all drink to that.

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Balance protection for lakes, economy

Bottled water rightly classified as a product, not a diversion

February 15, 2006

Protection of the Great Lakes has finally arrived in Michigan. It didn't come easily and it isn't the perfect solution.

But legislation headed for the governor at last brings Michigan in line with surrounding states that border the Great Lakes.

Almost unanimously, the House (100-4) and Senate (37-0) passed legislation that regulates water withdrawals from the Great Lakes and other bodies of water in the state. Twenty percent of the nation's fresh water supply is contained in the Great Lakes and plenty of entities -- from Southwestern desert states to international companies and other countries -- have made waves about exporting water.

Michigan relies heavily on the natural resource for its \$12.5 billion tourism industry and its own infrastructure needs and could not afford to drift along without some sort of legislation.

The law, which the governor said she will sign as soon as it hits her desk, requires legislative approval for large-scale projects and stipulates that users won't cause any harm.

Bottlers, manufacturers and others that consume more than 5 million gallons a day from the Great Lakes or the rivers connecting to the lakes will need a permit. The same is true for those using more than 2 million gallons a day from other water resources in the state.

Current water users won't need a permit unless they expand operations and designated trout streams will be protected with further restrictions. Those appear to be fair guidelines -- though they must be enforced in a manner that doesn't put jobs at risk.

It is now incumbent on the governor and legislators to closely monitor the withdrawal of water and the effects the regulations have on business. They must be willing to modify the guidelines when necessary and do so with expediency. The permitting process can't be used as an anti-growth tool.

Ignoring business needs or placing undue restrictions on them will further erode the state's economy. For example, Nestle Waters North America Inc. postponed plans to build a new plant in the state and add other new jobs to an existing one in Mecosta County.

The company sued Michigan over its claim that bottled water couldn't be shipped out of the Great Lakes Basin and the charge that bottled water was different than baby food, soda, cars or any other product that uses significant amounts of water and is sold across the country. Legislators wisely addressed the issue by defining bottled water as a product.

Protecting the state's most precious resource is essential, but it must be balanced with fair use guidelines for businesses. Otherwise jobs will flow out of the state, which Michigan can ill afford now or in the future.



February 14, 2006

State right to regulate water withdrawals

Michigan's status as the only Great Lakes state not to have any laws regulating water withdrawal soon will end, thanks to legislation approved by both the House and Senate last week and now awaiting Gov. Jennifer Granholm's signature.

It was not a simple issue to iron out, but we think that the bipartisan compromise reached by lawmakers will go a long way toward protecting Michigan's precious water resources. The state now has a blueprint for how users of large amounts of water must operate. New manufacturers, utilities, water-bottling companies and other large consumers now must obtain permits if their water withdrawals average more than 5 million gallons a day from the Great Lakes or rivers emptying into them, or more than 2 million gallons a day from inland lakes and waterways.

The compromise agreement also settles one of the thornier issues raised since a controversy erupted several years ago over a water-bottling plant in Mecosta County: Is bottled water a manufactured product or a diversion of water? Under the new laws, containers smaller than 5.7 gallons are considered products. We think this is reasonable since, as water-bottling companies pointed out, companies that make soda pop or over beverages also use large amounts of water but are not considered to be diverting water from the state if their products are sold elsewhere.

Last week's passage of Senate Bills 850, 851, 852, 854 and 857 also means that the governor can lift her moratorium on new or expanded bottled water operations in Michigan. She had imposed the moratorium in connection with the Mecosta County dispute, saying it would remain in effect until Michigan had a water withdrawal law.

We think the new laws will be fair to business while at the same time ensuring that the state has control over how large amounts of its water resources are used. There are protections for environmental issues, such as a limit of 100,000 gallons a day on withdrawals that may pose harm to designated trout streams and creation of a groundwater assessment tool to gauge the potential impact of underground water withdrawals on sensitive natural resources.

"The package appropriately focuses on protecting the state's most sensitive areas from inappropriate groundwater withdrawals - not on who is withdrawing the water," said Sam Washington, executive director of the Michigan United Conservation Clubs, in lauding the new laws.

James Clift, policy director for the Michigan Environmental Council, called the legislation "a huge step forward for Michigan."

We're just glad that lawmakers were able to reach agreement on this very important issue. The need for water will only increase in the future, and Michigan is blessed with an abundance. Now it has taken the right steps to ensure that blessing is safeguarded for the future.

Detroit Free Press

February 11, 2006

Lakes Protected Strong safeguards from a bipartisan effort

Michiganders will go from having virtually no protection for their bountiful and beautiful waters to gaining some of the best safeguards in the nation, rooted in landmark legislation passed this week. This is a major, long-awaited achievement in the state that, by virtue of its geography, should be the undisputed leader of all things Great Lakes.

For the first time, big water users will have to show in advance that they won't cause harm. By requiring permits, the state can track water use and ensure that no body of water, from small streams to the mightiest parts of the Great Lakes system, gets drawn down to the point where damage occurs. Bulk diversions out of the Great Lakes basin are forbidden.

Water used in food and beverages can still be exported anywhere, a provision that includes bottled water in containers up to 5.7 gallons. That disappointed opponents of bottling operations, but it makes more sense, at least for now, to prevent harm at springs and guard against overpumping.

The final compromises reflect solid work by a bipartisan group, with Reps. Jack Brandenburg, R-Harrison Township, and Michael Sak, D-Grand Rapids, at the forefront. The committee chairs in each chamber, Sen. Patricia Birkholz, R-Saugatuck, and David Palsrok, R-Manistee, kept everyone at the table.

Their labors paid off in nearly unanimous votes, exactly the strong voice Michigan needs to move forward in the fight to protect the Great Lakes. Calls for diversion will surely come, whether it is from the thirsty Southwest, the farmers who depend on the declining Ogallala aquifer in the Plains states, or towns just outside the basin that would like to slip their pipes into the Great Lakes system.

Michigan finally has the regulatory platform it needs to form a unified front with the other Great Lakes states and provinces when those diversion requests come. For the only state to lie almost completely within the basin, this act of leadership was crucial -- and well done.

STATE AGREES ON LIMITS FOR WATER USE

By HUGH McDIARMID JR.

Free Press staff writer

10 February 2006

Michigan's first laws to safeguard its signature resource - water - from being sucked out in massive quantities were passed Thursday by state legislators.

The new rules will preserve water for sportsmen, farmers, resort owners and industrialists who depend on it for recreation and profit, said a bipartisan group that hammered out the laws in tense negotiations during the past several weeks.

Farmers, utilities, industry and Nestle Waters' controversial **Ice Mountain** bottling plant can continue their water withdrawals.

"It's refreshing to see them come together on something like that," said Brian Quinlan, owner of the Hiawatha Canoe Livery in Roscommon, along the AuSable River. Quinlan depends on river levels - and the health of adjacent natural areas - to keep customers.

"There are some extremely unique areas along the river here, and it wouldn't make sense to have them pulling water from those areas."

Gov. Jennifer Granholm, who launched the plan's framework two years ago, said she would sign the legislation quickly.

It will make Michigan the last of the eight Great Lakes states to live up to a 1985 pact to regulate large-scale water removal.

Under the plan, users must get a permit and show that they won't harm nearby streams and ponds, or dry up local wells or wetlands. Smaller-scale users don't need permits, but must prove they won't harm trout, which are especially sensitive.

The plan also prohibits diversions of water - such as pipelines to Western states - outside the Great Lakes drainage basin, which is all the land containing water that flows into the Lakes.

Under the plan, **bottled water** is considered a product, not a diversion, and therefore it can be shipped outside the basin.

That stipulation cost the bill support from some environmental groups who fear it means significant amounts of water could be lost.

"Taking water out in a tanker is just the same as taking water out... containers loaded in a tanker," said Christy McGillivray, an organizer with Clean Water Action of Michigan.

But most environmental groups - joined by the state's business community - applauded the bills. "A huge step forward" because of the ability to safeguard water resources, said James Clift of the Michigan Environmental Council.

Mike Johnston, director of regulatory affairs for the Michigan Manufacturers Association, said he was "glad it's over. "I do believe it will increase the cost of doing business in Michigan," he said. But it also will help ensure Michigan's water - used in huge quantities in processes that create automobile parts, electricity and consumer goods - won't go elsewhere: "The manufacturers supported a ban on diversions," he said.

"We don't want to hand our water, and the jobs that come with it, out."

Contact HUGH McDIARMID JR. at 248-351-3295 or mcdiarmid@freepress.com.

**THE
FLINT JOURNAL**
IN TOUCH IN DEPTH INVOLVED

New state withdrawal rules good for Michigan's future

FLINT

THE FLINT JOURNAL FIRST EDITION

Friday, February 10, 2006

Laws providing for much stronger state oversight of major water withdrawals are a belated but welcome protection for Michigan's most precious resource.

With environmental groups and Republican lawmakers enthusiastically backing this legislation passed Thursday, it's evident that the bills are well-balanced and serve both the needs of business and nature.

When Gov. Jennifer Granholm signs the legislation, which she had been calling for, water bottling plants, utilities and other major water users will be regulated akin to policies in other states in the Great Lakes region. State permits would be needed for new or expanded water bottling plants withdrawing more than 250,000 gallons a day, and new extractions by other users would require permission as well, depending on the sources and amounts.

Beyond the technicalities, this legislation means Michigan's Great Lakes and other waterways for the first time will be protected from an adverse impact by large water users. Other states and Canadian provinces already have taken on this responsibility, and it's troubling that Michigan, which is in the heart of this fresh water supply, was so late to the table.

But from all evidence, Lansing has finally stepped up and over the next couple of years will have procedures in place that will be the equal of any other state's laws protecting this invaluable asset. And Michigan's future will be far better for it.

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Michigan's Economic Engine Depends on Water

Across Michigan, nearly every industry that drives our state's economy uses water. We rely on its availability to generate electricity, irrigate farmlands, manufacture cars, provide for recreation activities, supply homes, schools and businesses, and make beverage and food products. Michigan water users share a commitment not only to use water for the betterment of our economy and communities, and to employ wise conservation methods and responsible management practices.

Water Works Coalition Michigan's Regulated Water Users and Responsible Users of a Renewable Resource

- **Michigan Chamber of Commerce**
Doug Roberts, Jr. 517.371-2100
- **Michigan Manufacturers Association**
Mike Johnston 517.487.8554
- **Michigan Municipal League**
David Worthams 517.908.0303
- **Potato Growers Association of Michigan**
Ben Kudwa 517.669.8377
- **Michigan Groundwater Association**
George Carr 517.202.0924
- **Michigan Golf Course Owners Association**
Eric Rule 517.372.5656
- **Michigan Retailers Association**
Eric Rule 517.372.5656
- **Michigan Soft Drink Association**
Bill Lobenherz 517.371.4499
- **Michigan Aggregates Association**
Mike Newman 517.381.1732
- **Michigan Bottled Water Council**
Andy Such 517.202.1786
- **Michigan Concrete Paving Association**
Terry Vanderveen 517.484.8800
- **Michigan Infrastructure and Transportation Association**
Keith Ledbetter 517.347.8336
- **Grand Rapids Chamber of Commerce**
Jared Rodriguez 616.771.0359
- **Detroit Regional Chamber of Commerce**
Samantha Jones 517.372.2278
- **International Bottled Water Association**
Pat Donahoe 703.647.460

For more information about the Water Works Coalition or to join, please contact: Deborah Muchmore, 517-372-4400 or via email at debm@mrqmi.com.



An Analysis by Michigan's Job Providers — The Water Works Coalition of Proposed Water Withdrawal Legislation *November 2007*

Introduction

Water is one of Michigan's greatest assets. Nearly every industry that drives our state's economy uses water. Michigan relies on water to generate electricity, irrigate farmlands, manufacture cars, provide for recreation activities, supply homes, schools and businesses, build roads and Michigan infrastructure, and make a wide range of food and beverage products. This asset is one of the key reasons why so many industries choose to locate in Michigan, and is a critical tool to attract new job providers to our state.

Today, Michigan is engaged in an important discourse about its water resources – how to protect the Great Lakes from potential water siphoning to distant regions; how to ensure water resources and ecologies are responsibly stewarded; and how to provide for growing and sometimes competing needs for water by many.

Michigan lawmakers in the House and Senate have introduced bill packages aimed at addressing these questions. The cornerstone bills of both chambers would result in adoption the Great Lakes Compact. The Compact is a policy developed by the states of the Great Lakes region for coordinated water resource management. The common goal is to protect and enhance the Great Lakes ecosystem and prevent possible diversion of water. The Senate and House have additional legislation that would further and differently regulate water withdrawals and use by Michigan water users.

Michigan's job providers support legislature to adopt the Great Lakes Compact along with necessary state implementing conformance legislation to ensure control by the states of the Great Lakes of the region's water resources.

We also support the development of a "water withdrawal assessment tool" that incorporates sound science into the decision-making process as called for by Michigan's groundwater withdrawal laws enacted in 2006.

Job providers oppose those portions of the House package that impose new costs and impediments to the beneficial use of water through additional and unnecessary regulations would add to the already high cost of doing business in Michigan, further erode the state's weak economy, and discourage chances for future economic growth.

This paper provides policymakers and other interested parties with an analysis of the current bills and the position of the Water Works Coalition, representing Michigan's regulated water use community, including manufacturers, business, municipalities, agriculture and specific industry types.

Review of 2006 water legislation

In 2006, the Michigan Legislature enacted comprehensive legislation regulating water withdrawals in Michigan (Public Acts 33 – 37 of 2006). The effort to shape and support this legislation involved discussions on a broad range of issues important to water users, environmental groups, municipalities, and policymakers. The end result was consensus in support of policies that both protect the state's water resources and allow the responsible use of water to support economic activity. Consensus by stakeholders allowed lawmakers to act in bipartisan fashion to pass legislation by unanimous vote in the Senate and near-unanimous vote in the House.

The 2006 legislation established a broad, protective water withdrawal regulatory framework for Michigan. The program includes registration, reporting and permitting requirements. It covers all large quantity withdrawals — no matter the user — and prohibits any large quantity withdrawal from causing an adverse resource impact. Lawmakers took an approach to regulation that is consistent with the fundamental rationale underlying the Great Lakes – St. Lawrence River Basin Water Resources Compact (herein Great Lakes Compact); *i.e.*, regulating water withdrawals based upon the environmental effect of a withdrawal. This was done to set the stage for passage and implementation of the Compact in Michigan.

The 2006 legislation created a comprehensive vision of the statutory scheme needed for Michigan to adopt and implement the Great Lakes Compact. Now is the time for Michigan to adopt the Great Lakes Compact with conformance state implementing legislation.

The 2006 legislation also called for the creation of a water withdrawal assessment tool. The water withdrawal assessment tool has now been developed by the Groundwater Conservation Advisory Council, with assistance from leading scientists from the University of Michigan, Michigan State University and others. Now that the Council has completed its work, it is time to allow for a review of the function and accuracy of the tool. It is also critical that stakeholders have an opportunity to fully review the tool.

With the exception of legislation proposed to adopt the Great Lakes Compact and completion of a groundwater assessment tool, matters addressed in currently proposed legislation were largely resolved during lawmaking in 2006. On the following page are highlights of the 2006 legislation.

PA 33 – 37, 2006 Highlights

Registration, permitting and regulation

- No large quantity withdrawal is permitted to cause an adverse resource impact.
- Gives the MDEQ authority to prevent adverse resource impacts, including revocation of an existing permit.
- With limited exceptions, requires large quantity withdrawals (above 100,000 gallons per day) to be registered and to report their water use.
- Requires a permit for all new or increased large quantity withdrawals of 2 million gallons per day or more from an inland lake or stream, or 5 million gallons per day or more from the Great Lakes, or 250,000 gallons per day for water bottling operations.

No “adverse resource impact” is allowed

Until February 28, 2008, adverse resource impacts to trout streams are prohibited. Beginning March 1, 2008, adverse resource impacts to any of Michigan’s lakes and streams will be prohibited.

Develops a water “withdrawal assessment tool” by the Groundwater Conservation Advisory Council (GWCAC), for use by anyone proposing a new or increased large quantity withdrawal to assist in determining whether the proposed withdrawal may cause an adverse resource impact.

- GWCAC has completed its charge to develop the water assessment tool by no later than July 1, 2007; the proposed tool has been presented and is now being considered for enactment as part of the Senate legislation, as stipulated in the 2006 legislation.

Prohibition against new or increased diversions of Michigan waters out of the Great Lakes was expanded to include all waters of the Great Lakes basin.

- Defined diversion consistent with the Great Lakes Compact as water transferred by pipeline, canal, tunnel, aqueduct, channel, modification of a watercourse, tanker ship, tanker truck, rail tanker or similar means from the Great Lakes basin to a watershed outside the Great Lakes basin, excluding consumptive uses, and specifically including waters removed from the basin in containers of more than 5.7 gallons.
- Defined consumptive use consistent with the Great Lakes Compact as water lost or not returned to the Great Lakes basin due to evaporation, incorporation into products or agricultural products, use as part of packaging, or other processes, specifically including waters removed from the basin in containers of 5.7 gallons or less.

Requires water users to report the volume of withdrawals exceeding 1.5 million gallons per year; allows farmers to file a conservation plan in lieu of registering water use.

Requires water use sectors to begin designing water management and conservation practices by 2008.

Encourages formation of voluntary water users committees to assess impacts of water withdrawals and allow large quantity withdrawers to resolve potential conflicts.

Overriding policy objectives for sound water regulation

Water must be maintained as one of Michigan's greatest assets for the economic well being of the state and its citizenry. Michigan's regulated water use community believes laws enacted in 2006 preserved this priority while adding substance to protecting the state's water resources.

At its core, sustainable water use is premised upon avoiding unreasonable injury to other users and/or the environment. Achieving this calls for water use legislation that respects the following principles:

- Protective of important ecosystems and habitats
 - Applied fairly and equitably across all major water users
 - Based on credible data and scientifically valid measures
 - Focused on areas where water conflicts have occurred and/or where they are most likely to occur
 - Promotes and recognizes conservation steps taken by water users
 - Preserves long-standing private property rights, such as right to reasonable use
 - Provides certainty of law and regulations
 - Recognizes interconnection of surface and groundwater resources
-

Where do Michigan's businesses, manufacturers, farmers, municipal water suppliers and other water reliant industries stand?

✓ Support — Senate Bills 212 and 858

Senate Bills 212 and 858 would ensure Michigan's leadership in adopting the Great Lakes Compact and implementing language. Specifically, the Senate bills would:

- Adopt into Michigan law and implement the Great Lakes – St. Lawrence River Basin Water Resources Compact (the "Compact").
- Revise and strengthen the current Michigan regulatory framework to achieve consistency with the Compact.
- Reduce the permit threshold for withdrawals from the Great Lakes from the current 5 million gallons per day to 2 million gallons per day.
- Impose new permit requirements for withdrawals resulting in intra-basin transfers of more than 100,000 gallons per day.
- Require all water withdrawal permit applicants after January 1, 2009 to certify compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures.

✓ Support Direction — Senate Bill 860

✓ Support Direction — House Bill 4343 and 4336, with amendments

Senate Bill 860 would adopt into law the groundwater assessment tool while preserving the benefits of the legislation enacted in 2006.

Senate bill 860 would:

- Adopt into Michigan law the water withdrawal assessment tool that has been developed by the Groundwater Conservation Advisory Council pursuant to the 2006 water legislation.
 - Require use of the tool to screen applications to register large quantity withdrawals that are not otherwise subject to permitting requirements.
 - Provide for internet based registration of large quantity withdrawals that pass the assessment tool screen.
 - Provide for site-specific review by MDEQ of large quantity withdrawals that do not pass the assessment tool screen, and allow for registration of only those that MDEQ determines are not likely to cause an adverse resource impact.
 - Require the Groundwater Conservation Advisory Council to further develop and refine the assessment tool.

House Bill 4343 and 4336 would adopt the Great Lakes Compact. Michigan's regulated water users generally support the direction of these bills; however, several technical issues with both bills need to be addressed to assuage concerns of Michigan job providers, including:

- Effectuation Clause (HB 4336 and HB 4343, Page 49 Lines 18-19) — need for consistency between the Compact legislation and other Michigan water withdrawal laws to ensure clarity for job providers about which rules are to be followed.
- Grandfathering (HB 4336 and HB 4343, Page 36, Lines 7, 8) — PA 33 – 36, 2006 provided standards for grandfathering water user amounts based on several options. The Compact and these provisions need to conform.
- Scope of Permits (HB 4336 and HB 4343, Pg 34, line 7) — Clarification is necessary to determine what standard permit applicants will be held to with respect to potential water withdrawal impacts. Job providers endorse a balanced consideration of multiple factors, including the nature and degree of impacts relative to need, efficiency and proposed use.
- Water Conservation (HB 4336 and HB 4343, Pg 20, Line 10) — Clarification is needed to ensure that industry developed conservation standards can be used to fulfill requirements of the Compact.
- Unchecked Ability to Change Standard (HB 4336 and HB 4343, Page 14, Line 26) — The proposed Compact may allow the newly-created Great Lakes-St. Lawrence River Basin Water Resources Council (the "Council"), composed of the Governors or their appointees, to modify the Standard without going back to the State legislatures
- Michigan must adopt permit thresholds (HB 4336 and HB 4343, Pages 32-33) — It is very important that Michigan clarify that the permit standards required under PA 33-36 are the standards used to meet the Compact requirements.

NOTE: For more detailed examination of these concerns, please refer to Michigan Chamber of Commerce Memorandum "Great Lakes Compact," 10/26/07.

x Oppose — House Bills 5065 - 5073

Regulated water users oppose arbitrary, over-reaching and costly regulations that threaten the livelihoods of families, businesses, communities and the state.

Bills introduced in the House, except for HB 4343 that would enact the Great Lakes Compact, are overly burdensome, and if enacted, would choke off economic growth. Industries already here would question expansion, and those looking at Michigan for possible investment would

look elsewhere where the regulatory climate was more amenable and reasonable. As a result, and for the specific reasons below, Michigan's regulated water use community opposes the House bill package.

The proposed legislation would:

- Completely reverse the near-unanimous consensus achieved by Michigan's one-year-old water legislation;
- Introduce new uncertainties into the permitting process;
- Add vague and burdensome permitting standards that go far beyond the Great Lakes Compact and that address matters unrelated to science and resource protection;
- Cause permits needed by large water users to be highly uncertain and unreliable;
- Unfairly and unjustly regulate some industries more excessively;
- Create uncertainty by multiplying opportunities for litigation, even where DEQ has determined that standards have been met and; and
- Create bias and impose unfair and punitive measures against certain industries.

While the national economy continues to experience solid and sustained growth, Michigan's economy remains in the doldrums. Michigan's unemployment rate at 7.7 percent remains the highest in the nation by more than 1.5 points. Imposing new costs through additional and unnecessary regulations would add to the already high cost of doing business in Michigan and discourage future economic growth.

Commonly Used Terms in Talking About Water

Reasonable Use "Reasonable use" describes a property owner's legal right to use water. This right allows a property owner to use water found on, under or adjacent to the property as long as that use is not wasteful and does not unreasonably interfere with the reasonable uses of others. If there is a conflict between two competing uses, a balancing test is applied to resolve it. The factors to be considered in the balancing test include the:

- suitability of the use to the location
- extent and amount of any harm
- benefits of the use
- necessity of the amount and manner of the water use
- factors that may bear on the reasonableness of the use

Riparian Rights "Riparian rights" describes the rights of all landowners who possess property adjoining surface water bodies, such as lakes, rivers and streams. The owner of land with riparian rights has the right to use the adjoining water body for domestic household purposes, access to navigable waters, installing a dock and general enjoyment. Riparian rights also depend upon "reasonable use" as it relates to other riparian owners to ensure that the rights of one riparian owner are weighed fairly and equitably with the rights of adjacent riparian owners.

Public Trust Doctrine The "public trust doctrine" refers to the *public's rights with regard to navigable waters*. Michigan's public trust doctrine treats the Great Lakes and their bottomlands differently from navigable inland waters. The state has legal title to Great Lakes bottomlands, which it holds in trust for the public. Regarding navigable inland waters, adjoining property owners have title to bottomlands. In both cases, the public is given a right under the public trust

doctrine to use the waters themselves for commerce, fishing and navigation. The public trust doctrine assigns the State the duty to protect the public's rights to use navigable waters.

Michigan's public trust doctrine does not apply to non-navigable waters, such as groundwater and small creeks, brooks and streams. Michigan uses the "log-flotation" test to determine whether or not a water body is navigable. Under this test, only waters that are capable (in their natural state) of floating large commercial logs are deemed navigable.

Conclusion

In 2006 the Michigan Legislature enacted critical legislation that protects Michigan's water resources through fair, reasonable and scientifically merited regulations. The Legislature also laid the groundwork for enactment of the Great Lakes Compact and a water withdrawal assessment tool to provide initial guidance for anyone considering a large quantity withdrawal in the state. The Legislature should now move aggressively forward with enactment of the Compact and related implementation language. Michigan's regulated water users fully support the adoption of the Compact. Lawmakers should halt enactment of House bills that would unravel the important balance achieved a little more than one year ago in 2006, bring further hardship to Michigan job providers and scare off potential investors in our state. Michigan's regulated water users stand opposed to the House package.

The Water Works Coalition Michigan's Regulated Water Users

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SUMMARY OF SENATE PACKAGE ON WATER WITHDRAWALS

SENATE BILLS 212, 858, 859 and 860

The Senate package consists of four bills, tie-barred together. They would:

- Adopt into Michigan law and implement the Great Lakes-St. Lawrence River Basin Water Resources Compact (the "Compact").
- Revise and strengthen the current Michigan regulatory framework so as to achieve consistency with the Compact.
- Reduce the permit threshold for withdrawals from the Great Lakes from the current 5 million gallons per day to 2 million gallons per day.
- Impose new permit requirements for withdrawals resulting in intra-basin transfers of more than 100,000 gallons per day.
- Require all water withdrawal permit applicants after January 1, 2009 to certify compliance with generally accepted water management practices or environmentally sound and economically feasible water conservation measures.
- Adopt into Michigan law the water withdrawal assessment tool that has been developed by the Groundwater Conservation Advisory Council pursuant to the 2006 water legislation.
 - Require use of the tool to screen applications to register large quantity withdrawals that are not otherwise subject to permitting requirements.
 - Provide for Internet based registration of large quantity withdrawals that pass the assessment tool screen.
 - Provide for site-specific review by MDEQ of large quantity withdrawals that do not pass the assessment tool screen, and allow for registration of only those that MDEQ determines are not likely to cause an adverse resource impact.
- Require the Groundwater Conservation Advisory Council to further develop and refine the assessment tool.
- Increase the penalties for a violation of Part 327 of NREPA governing water withdrawals.

SUMMARY OF HOUSE PACKAGE ON WATER WITHDRAWALS HOUSE BILLS 5065-5073

The House package consists of nine bills. They would:

- Completely upset the near-unanimous consensus achieved by Michigan's one-year-old water legislation
- Add vague and burdensome permitting standards that go far beyond the Great Lakes Compact, addressing matters unrelated to science and resource protection
- Cause permits to be highly uncertain and unreliable
- Subject water bottlers to more requirements, more risk and more uncertainty than other water users (even where effect on resources is the same or less).

Specifically, these bills would:

Introduce New Uncertainties Into the Permitting Process

- DEQ would be required to deny a permit if it determines that a proposed withdrawal would violate any of several vague and subjective new standards.
 - A permit must be denied if a proposed withdrawal would result in "impairment or unacceptable disruption to aquatic resources." This is a highly subjective standard that will defy efforts to regulate water withdrawals in an even-handed, predictable and science-based manner. Unlike the current law, this standard does not define what level of change constitutes "impairment" or how much disruption is "acceptable."
 - A permit must be denied if a proposed withdrawal would adversely affect "riparian rights or the public trust in any groundwater or surface waters from which or into which the water to be withdrawn would otherwise flow." This conflicts with over a century of Michigan case law, in that:
 - It seems to grant total superiority to riparian uses over groundwater uses
 - It implies the existence of a public trust in groundwater and tributary surface waters, contrary to long-standing judicial precedent.
 - A permit must be denied if a proposed withdrawal would "interfere with the property rights of another person to lawful use of water." This seems to overturn the common law "reasonable use balancing test" in that any interference – as opposed to unreasonable interference – with another's existing water use would require the DEQ to deny a permit. This could foreclose desirable future uses that would not unreasonably interfere with existing uses.
- DEQ would be required to consider and weigh several very subjective factors in making permitting decisions. For example, the impact of the proposed withdrawal on "other uses of the groundwater or surface waters from which or into which the water to be withdrawn would

otherwise flow, including uses for recreation, fish and wildlife, aesthetics, local government, agriculture, commerce, and industry.”

- All large quantity users (100,000 gpd or more) – both existing and new – would be required to comply with as yet undefined (and potentially changing) “environmentally sound and economically feasible water conservation measures.”
- Local units of government would be authorized to regulate large quantity withdrawals (in addition to regulation at the state level), limited only by a vaguely worded requirement that the regulation be “consistent with long-term water planning to assure water availability.”

Reduce the Certainty Afforded Once a Permit is Obtained

- All permits would expire after five years unless renewed by DEQ, meaning that a water user must once again show that all permitting standards are satisfied.
- DEQ would be allowed to designate one or more areas of the state as a “sensitive water resource” after which DEQ could modify existing permits and/or require permits where none would otherwise be required.
- Michigan law would be re-directed away from science-based decision-making by eliminating the requirement of “clear and convincing scientific evidence” of adverse resource impact before a permit may be revoked.

Impose Burdensome New Requirements and Make Unnecessary Changes to Existing Regulatory Standards

- The definition of “index flow” would be altered so as to significantly reduce opportunities for new or increased water withdrawals in Michigan.
- The thresholds for required registration and permitting of new or increased water withdrawals would be dropped by more than 50%, imposing unneeded regulatory burdens on smaller users.
- Vague and subjective standards would be created that undermine the effectiveness of science-based standards now in effect. For example, the subjective new “impairment or unacceptable disruption to aquatic resources” test in these bills undercuts the objective, fisheries-based definition of “adverse resource impact” contained in the current law and used by the new assessment tool.

Create Huge Uncertainty By Multiplying Opportunities For Litigation, Even Where DEQ Has Determined That Standards Have Been Met

- Any county prosecutor or “any person affected or threatened with effects” of a large quantity withdrawal could file court actions to prevent or stop claimed violations, even where a permit is already in effect.
- Permits could be collaterally attacked in litigation using a de novo standard, meaning that (a) any permit could be changed or revoked by a court at any time, (b) fact-finding and application of the statutory standards would start all over again in court, (c) no deference would be given to DEQ’s earlier findings and conclusions.

- Any interested person – not just a registrant or permit holder – would be allowed to petition DEQ alleging that 1 or more withdrawals are causing or likely to cause adverse resource impacts.
- “[A]ny person whose interests have been or will be adversely affected” could file suit in circuit court, without being bound by DEQ determinations made during the permit process.
- The deterrent penalty currently provided by law for multiple unverified petitions would be eliminated.

Create Further Bias and Impose Punitive Measures Against Water Bottlers

- Water bottlers would be required to obtain a permit for new or increased water withdrawals as small as 100,000 gpd, while other water users would only be required to obtain permits for withdrawals at least ten times that size.
- Provisions in last year’s legislation would be repealed that had expressly recognized bottled water in containers of 5.7 gallons or less to be a consumptive use and not a diversion.
- All DEQ determinations regarding bottled water would be subjected to de novo review by the courts. Bottled water is the only category where de novo review is provided outside the permitting context.
- All information submitted in support of a water bottler’s application would be subject to disclosure under the Freedom of Information Act. (Note: Water bottlers are thus denied the FOIA exemption, available to all others, regarding baseline capacity information.)
- A public hearing would be required before the DEQ makes the determinations for bottled water approval. (All other users have a comment period before permitting.)
- DEQ would be required to consider whether or not the water withdrawn will be used within the watershed from which it was withdrawn when deciding whether a permit should issue. (This factor would inevitably disfavor water bottlers, since this use is by definition not localized.)
- All large quantity users (100,000 gpd or more) — both existing and new — would be required to return unused water to as close to the point of withdrawal as possible. (Water bottlers are extremely efficient water users, but this requirement would be difficult, if not impossible to satisfy in many cases, since bottling plants are frequently located some distance from the site of a withdrawal.)